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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,729	06/27/2003	Valentine J. Rhodes	1020.P16727	6499
57035	7590	10/01/2008		
KACVINSKY LLC C/O INTELLEVATE P.O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER	
			QURESHI, AFSAR M	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			10/01/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/607,729

Applicant(s)

RHODES, VALENTINE J.

Examiner

AFSAR M. QURESHI

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. This Office Action is responsive to amendment received on 6/26/2008. Amended claims are entered as requested.

Response to Arguments

2. Applicant's arguments filed on 6/26/2008 have been fully considered but they are not persuasive.

Applicant argued that the Office Action (i) fails to establish a *prima facie* case of obviousness, and (ii) the cited reference of Ketchum (US 2003/0072379) fails to teach the limitation of "puncturing by placing no modulated data or information in the selected subcarrier...".

As to (i) – Examiner, respectfully, disagrees with the argument. It is noted that the references, Chini and Ketchum, are analogous art, and they are in the same field of endeavor of modulation of non-data bearing carriers. It is recognized that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5USPQ2d 1596 (Fed Cir.1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation or obviousness can be found in Chini [0006] to [0008].

Examiner requests the Applicant to clearly point out any specific reasons as to why the prior art (Chin and Ketchum) are not combinable.

Examiner contends that all the limitations are addressed in the following Office Action including one argued herein.

As to (ii) Examiner responded to the argument in Office Action mailed 3/26/2008 in response to argument filed on 2/26/2008. The cited art, Ketchum, discloses the functionality of 'puncturing' by selectively deleting some symbols. However, during this process Ketchum **does not add any information**.

3. ***The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.***

4. Claims 1-8, 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chini et al. (us 2002/0191533) in view of Ketchum (US 2003/0072379).

As to claims 1-4, 11, Chini discloses a multicarrier communication system comprising a transmitter 500 (fig. 5) having channel knowledge wherein transmitter and receiver determine the channel knowledge. Transmitter by sending a channel information request to the receiver 550 (fig. 5) to characterize all carriers associated with the channel link and receiver analyzes the received signal and characterizes the data placed on each carrier, transmitter receives an out put of the *carrier map* indicating the channel knowledge of communication link to puncture (deleting code symbols

periodically from the sequence for purpose of constructing a higher rate code and deleting parity bits (see [0041], [0029] and [0030]).

As to claim 17, Chini further discloses a processing unit 400 coupled to receiver and a memory 410 which can also function as a form of SRAM (it caches data traveling between two MCM systems) (see [0025] and fig. 4). As to claim 2, the transmitter, disclosed by Chini, is an OFDM transmitter (see [0029]).

As to claims 5-8, 10, 12-16 and 18-20 as discussed in the rejection of claim 1 above, Chini is concerned with multi-path fading, interference in the same field of endeavor as the current invention, and obtains channel knowledge from these activities and devices therein (see [0003]-[0007]). Chini further discloses puncturing the carrier by placing energy without including data wherein in other subcarriers do not require placing energy that are in reliable state. Chini also discloses that the energy is also placed into the punctured subcarrier to reduce peak to average power ratio (see [0004], [0006] and [0021] and figs. 1-2).

As to claims 1, 11 and 17, Chini discloses identifying unreliable carriers. However, Chini fails to specifically disclose that the unreliable carriers, or the carriers that suffer from channel impairments from a plurality of carriers are punctured prior to transmission by placing no information in the selected carriers and transmitted power is re-allocated to information carrying carriers (subcarriers).

Ketchum discloses a method and apparatus for determining power allocation and one of the techniques is to use fixed base code to encode data and the coded bits for

each transmission channel are then punctured prior to transmission (i.e., selectively deleted). Power is re-allocated to different channels carrying information, Ketchum further discloses maintaining the optimal value of SNR since the slope of the error rate drops rapidly as the SNR increases (see [0018]).

Therefore it would have been obvious to one of ordinary skill in the art, at the time of invention, to be able to utilize coding techniques and selectively deleting subcarriers that suffer from link conditions such as fading in order to effectively and efficiently allocating power to different channels.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

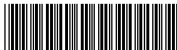
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AFSAR M. QURESHI whose telephone number is (571)272-3178. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Field Lynn can be reached on (571) 272 2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Afsar M Qureshi/
Primary Examiner
Art Unit 2616

9/25/2008

Application Number**Application/Control No.**

10/607,729

**Applicant(s)/Patent under
Reexamination**

RHODES, VALENTINE J.

Examiner

AFSAR M. QURESHI

Art Unit

2616